IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.748 of 2006

Bashirkhan M. Pathan .. Appellant

versus

Ravansidh Manikrao Gadmire .. Respondent

...

Mr.I.M. Khairdi for the appellant.

CORAM : D.G. KARNIK, J

DATED : 17th October 2006

P.C.:

1. Heard learned counsel for the appellant.

2. This appeal is directed against the order dated 15th July 2006 rejecting the application made by the appellant-plaintiff for attachment before judgement of the property of the respondent.

3. The appellant filed a suit against the respondent for recovery of Rs.17,675/-. In the suit, the appellant made an application for attachment of a plot belonging to the respondent alleging that the respondent was trying to sell the plot and if the said plot was sold, appellant would have no means for recovery of the amount of the decree that may be passed against the respondent. That application was rejected principally on the ground that there was no averment in the application that the respondent was trying to dispose of his property with a view to delay or defeat the execution of the decree that may be passed against him.

4. Order 38 Rule 5 of the Code of Civil Procedure lays down that the property of the defendant may be attached if the defendant is trying to sell or alienate his property with a view to delay or defeat the execution of the decree that may be passed against him or if the defendant was about to remove the whole or any of his property from the local limits of the jurisdiction of the court, with a view to obstruct or delay the execution of the decree that may be passed against him. There was no averment in the application

that the respondent was trying to sell the property with a view to obstruct or delay the execution of the decree that may be passed against him in the suit. In the absence of appropriate pleading, the court was right in holding that the ground under Order 38 Rule 5 was not made out. The order passed by the trial court is apparently correct. Accordingly, appeal is dismissed in limine.

(D.G. KARNIK, J)